

START

1600

CASE

CASE 1600

COURT OF GENERAL SESSIONS OF THE PLACE,
CITY AND COUNTY OF NEW YORK. PART III.

THE PEOPLE : Before:

-vs-

HON. OTTO A. ROSALSKY, J.,

and a Jury.

DANIEL O'NEILL, otherwise
called Dave Neal, impleaded
with William Adams, otherwise
called James Lethridge; Edward
Stone, otherwise called Edward
Schultz, otherwise called
Edward Stern, otherwise called
Edward Thompson; and Henry
Dixon.

New York, August 27th, 1912.

Indicted for Grand larceny in the first degree.

Indictment filed July 8th, 1912.

-: A P P E A R A N C E S :-

ASSISTANT DISTRICT ATTORNEY CHARLES F. BOSTWICK, for
the People.

GEORGE GORDON BATTLE, ESQ., and GEORGE R. SIMPSON, ESQ.,
for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

CASE # 1600

THE PEOPLE'S TESTIMONY.

ROBERT H. MARTIN, M.D., of Mt. Clemens, Michigan, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. Doctor, I am going to ask you to speak loud enough for the twelfth juror to hear you, while you are on the stand. You are the complainant in this case, Doctor? A I am a witness, I am the complaining witness.

Q. You are the complaining witness? A Yes, sir.

Q. Do you remember being in Philadelphia in the latter part of June? A Yes, sir.

Q. And while in Philadelphia, did you meet the defendant Adams there? A Yes, sir.

Q. A little louder, Doctor. A I did, yes.

Q. Now, will you state the circumstances under which you met Mr. Adams in Philadelphia? A Mr. Adams came to me on the street and called me by name.

Q. Now, I object to any conversation with the defendant Adams, unless it is connected with the defendant at the bar.

Q. Of course, the District Attorney will have to show that whatever Adams said to him was in pursuance of a scheme on the part of more than one defendant.

CASE #1600

1797

3

MR. BOSTWICK: I think it is fair to assume, if your Honor please, from the opening of the District Attorney, that there will be a connection made.

MR. BATTLE: I make the objection now, to protect the rights of the defendant on trial here, O'Neill.

THE COURT: I overrule the objection, on the promise of the District Attorney to connect.

MR. BATTLE: And, in order to have the record completely covered, I will say that I object to anything said by the defendant Adams, at this time, and I respectfully except to the ruling of the Court.

THE COURT: Yes.

BY MR. BOSTWICK:

Q Now, proceed, Doctor. A Stating that I probably didn't know him, but he knew me by sight, and mentioning his having been to St. Clemens, and stating the hotel at which he stayed, and describing my property there, my office had and so on, and he convinced me that he at least been there, and, like many others, he might have known me by sight, and have known who I was.

And so I felt justified in assuming that he told the truth.

And he then told me of the object of his trip to Philadelphia, and said that he was very much disappointed.

That he came here on business, and the party

CASE #1600

4
he expected to see wasn't there, and he was very glad to meet someone in whom he had confidence.

And I then asked him about what the business was that brought him to Philadelphia, and he said it was about a real estate deal with his cousin, in New York.

And so we walked back to the Walton Hotel where I was staying, and he explained in my room at the hotel the object of his visit, and why he spoke to me.

He said that his cousin, who was the secretary of a coal company of Pittsburg, as I understood it, had been commissioned or given the privilege of selling certain lands which belonged to the President of that company.

The President of the company, it seems, had purchased 5,000 acres of timber in the south, at \$1. per acre -- well, it was timber land, but it was swamp land, and he bought it for a shooting preserve.

Q Well, now, Doctor, as the result of all the conversation that you had with Mr. Adams in Philadelphia, where did you finally go? A To New York.

Q You came to New York? A Yes, sir.

Q And was it for the purpose of meeting anybody?

A Yes, sir, for the purpose of meeting his cousin.

Q And you arrived in New York on June 28th, if I remember correctly, or thereabouts? A Yes, about that time.

CASE #1600

Q And did you meet any person supposed to be his cousin? A I met a man at the Astor Hotel, who was supposed to be his cousin, yes.

Q And then did you have conversations with him? A I did, yes.

Q And were they relative to the same business transactions, or connected with the same business transactions, that had been discussed, while you were in Philadelphia, with Mr. Adams?

MR. BATTLE: I make the same objection, to any conversation with the so-called cousin.

THE COURT: I overrule the objection, subject to the promise of the District Attorney to connect that conversation with the acts of this defendant.

MR. BATTLE: I except.

A They were.

BY MR. BOSTWICK:

Q Now, without going into details about those business transactions, because they are far-related from this case, will you tell us what was said about Boston people, if anything? A This man Jackson, who was supposed to be the cousin, said that there were Boston people who had arranged to purchase this property, and it was his purpose to go to the hotel to introduce us to these Boston people when they came.

CASE 1600

Q And did Jackson wait for these Boston people to come to New York, or did he say anything in regard to the Boston people? Just bring out that portion of the conversation.

A Jackson said that the Boston people would be here Monday night, or Tuesday morning, and this was Friday night we arrived here.

MR. BOSTWICK: I take it that this is taken subject to the same objection?

MR. BATTLE: Yes, all of it.

BY MR. BOSTWICK:

Q Continue, Doctor. A He said that, on Monday, he thought he would go on to Boston and meet them and come down on the train with them, as I had to get back to Philadelphia on Tuesday night; that he would go and meet them, and he left New York, on Tuesday, about two or three o'clock, to meet them, as I supposed.

Q Have you ever seen Jackson since? A I have not.

Q Now, he left New York on what day, did you say?

A On Monday, I mean, not Tuesday. And Jackson asked us to walk part of the way to the depot, because he wanted to make a purchase, I think it was an automobile coat or something of the kind, and we walked three or four blocks down from the hotel, and then he purchased a light duster, and evidently started for the depot, as we supposed, and we were to wait until the next morning.

CASE #1600

7
And then Adams suggested a walk, and I said I had better go back to the hotel and write some letters, but it was early and he prevailed upon me, and so we walked along the street.

Q And when was that, what time of the day? A About three o'clock.

Q And you walked on Broadway? A Yes, sir.

Q Up or down? A Up Broadway.

Q And while walking on Broadway, did you see a man whom you now know as Dixon? A Yes, sir.

Q And where did you see him and under what circumstances? A I think it was on about the corner of 53rd Street and Broadway, where the elevated crosses there.

Q What was Dixon doing at the time? A He was standing in a partly-open doorway or archway, right near the walk, counting considerable money.

And it was I that made the statement that it looked rather crude or raw for a man to be counting his money at an open doorway.

I made that statement to Adams, and, as we approached him, Adams replied to this effect, yes, he was foolish to do that.

And it was said so loud that it attracted the attention of this man Dixon.

Q And how far were you standing from Dixon when

CASE #1600

Adams made this remark, similar to your remark? A Why, about I should say from me to the first or second juror (indicating).

MR. BATTLE: I move that that part of the testimony, that it was so loud that it attracted the attention of the man in the doorway, be stricken out.

THE COURT: Motion granted. Strike it out, and the jury will disregard it.

BY MR. BOSTWICK:

Q Well, did Dixon make any remark in reply to the remark that Adams had made?

MR. BATTLE: I object. I object to anything said by Dixon, in the absence of O'Neill, as not binding, your Honor.

THE COURT: What Dixon said to this witness, do you mean, Mr. Bostwick?

MR. BOSTWICK: Yes, what Dixon said to Adams and this witness. This is subject to being connected, of course, and is not binding on O'Neill, unless O'Neill was in the conspiracy.

THE COURT: If the jury should find that all of the conversations were had in pursuance of a scheme or design on the part of these defendants to deprive or defraud the complaining witness of the property, such conversations are admissible, even though in the absence

CASE # 1600

of the defendant.

MR. BATTLE: Provided the defendant is connected with the fraudulent scheme?

THE COURT: Of course. I overrule the objection.

MR. BATTLE: Exception.

BY MR. BOSTWICK:

Q Now, state what Dixon said to you and Adams? A About the time of that conversation, he looked up at both of us, and in such a way that it appeared to me that ---

THE COURT: No, no, strike that out. You must not state how it appeared to you. State the facts, and let the jury draw their own inference.

THE WITNESS: Well, what was that question, please?

(The question is repeated by the stenographer).

A He said that it might be strange, or something to that effect, his counting money in that way, but he got it in rather a peculiar way, and he wished to explain how he got it. I can't state just the exact words, but it was in the way of explaining why he was counting the money in that way.

BY MR. BOSTWICK:

Q And did he then proceed to make an explanation of how he got the money? A Yes, sir. He stated voluntarily that the money was obtained from a bet, I believe, on a horse-race.

CASE 1600

Q Did he say by whom he was employed or anything in that connection? A Why, not just at that time.

Q Not at that time? A No, sir.

Q Well, now, state all that conversation, as you remember it. A He stated that he had just won a bet on a horse-race, and so on, and he accused us of being spotters, from the fact that we had spoken of the matter; he thought that we were spotters after him.

And then Adams said to me that he thought that fellow was one who had been playing in different pool-rooms in different parts of the country and they wondered who he was, because he had won so much.

Q And this was said in the presence of Dixon, was it?

A Yes, he could hear it. He was right with us then.

Q And what did Dixon then say? A And Dixon accused us of trying to find out who he was; and that that was our purpose in speaking to him, and I replied by saying that I didn't know anything about the matter, and that I was not aware of anything that he had done, and that I didn't understand what he was referring to.

Q Was anything said about Dixon's picture? A Adams then said that he had seen Dixon's picture in one of the western papers, as a man who had had some wonderful good information about horses, and, in fact, he almost recognized the man from the picture that he had seen in the paper.

CASE #1600

Q And what did Dixon then say? A He then produced a clipping from a newspaper. Oh, at first, he wanted to make sure that we were not spotters, and they then spoke of some brotherhood lodge that they evidently belonged to, and so on. And then, after he seemed to be convinced that this man Adams -----

MR. BATTLE: I object to that, he seemed to be convinced.

THE COURT: Objection sustained. Strike that out, and the jury will disregard it.

BY MR. BOSTWICK:

Q Well, Adams told Dixon something about a lodge?

A Yes, sir.

Q Now, then, unless there be objection, state whether they said that they belonged to the same lodge or not?

A They stated that they were the same lodge members, or members of the same lodge, and, therefore, he had confidence in Dixon.

MR. BATTLE: I make the same objection to all this, your Honor.

BY THE COURT:

Q Dixon said this to whom? A He said, addressing both of us, that he had confidence in us, because Adams was a lodge member of his.

Q He said that? A Yes, sir.

CASE #1600

Q Dixon said that? A Yes, sir.

THE COURT: I shall overrule the objection.

MR. BATTLE: Objection.

BY MR. BOSTWICK:

Q Now, was anything said about any horse-breeding association, or horse association of any kind, at that time, or subsequently? A After he explained this matter, he said then that he was a representative of the Horse-Owners' Association of America, as I understood him.

Q That he, Dixon, was? A Yes, sir, that he was representing the Horse-Owners' Association, and showed a card of some such association, a card of membership.

Q Did you see that card? A Yes, sir. And he also produced some cipher method or code, to further convince us of that fact.

Q Now, I don't think that the last juror can hear you; I don't think that he heard that answer. A That he was in the employ of some concern of that kind, and to further convince us -----

Q Now, after he had -----

THE COURT: Strike out, "and to further convince us", and the jury will disregard that.

BY MR. BOSTWICK:

Q Now, then, was anything said about betting? A Yes, sir; he said that he intended to bet the money of his concern,

CASE #1600

that afternoon. And then Adams suggested that he make a small bet for us.

He explained the fact that, as he was employed by those people, it was out of the ordinary doing that, but, as he had confidence in our being square with him, that he would do that. And he took a small amount, and went around and bet it.

Q How much did you give, Doctor? A If I remember --- I don't recall giving him anything. I think Adams furnished the \$10 bill.

Q Do you recall how much Adams gave him? A He gave him a \$10 bill.

Q That is your best recollection? A Yes, sir.

Q Now --- A With the instructions to bet a few dollars for us, as he indicated, \$2 apiece, I think, out of the \$10.

Q Oh, I see. He was not to bet the whole \$10? A No, sir.

Q Well, what was the conversation after that? A The conversation was to bet a few dollars. And then he went around to where this place was, evidently, and made the bet.

Q Now, you don't know where he went, do you? A No, sir. He left us.

Q And that left you and Adams alone? A Yes, sir.

Q Now, that afternoon, did you again see Dixon? A Yes,

CASE 1600

9
sir.

Q Well, where did you see him? A He returned in about 15 or 20 minutes to the same place.

MR. BATTLE: I object, if your Honor please, to that part of the statement of the witness that he evidently went and made a bet, and move that it be stricken out.

THE COURT: Yes, objection sustained. Strike it out and the jury will disregard it.

BY MR. BOSTWICK:

Q Now, he returned; did he? A Yes.

Q And what did he say when he returned to you and Adams? A He stated that the bet that he had made had won, and he gave us some money.

Q How much did he give you? A I think it was \$8.

Q And how much did he give Adams? A \$8. He had bet \$2 apiece.

Q Did he say that he had bet \$2 apiece? A Yes, sir.

Q Now, tell us what he said, if anything, further, about betting? A He said that there were several events coming off later in the afternoon, on which he was to make heavier bets, and, as he had made a heavy winning from the same place, he suggested his not making any bet himself on the heavy money, but suggested others doing that, so that he would not be the only winner on heavy money, and, in doing it, he suggested that I put the money up.

CASE # 1600

Q Now, state just what took place from that time on.

A Then he suggested that, in order to do that, we go to the place with him, where this betting took place, and on the way there -----

Q Well, now, you were standing at what point then? On Broadway? A Yes, sir. And we walked up 53rd Street and back to Broadway, and we went further on Broadway, to 52nd Street.

Q And then you proceeded towards 52nd Street? A Yes, sir.

Q Now, you were about to say something about "on the way", and I interrupted you. Now, tell us about that. A At that time he gave me the money to bet, \$1,000.

BY THE COURT:

Q Who gave you that money? A Dixon.

BY MR. BOSTWICK:

Q In what denominations was the money? A Ten \$100 bills. And he advised me to make the heavy bets on the race that he would indicate, later on.

Q Were you to bet the \$1,000? A At that time I supposed that was so, yes.

Q Now, after you got the \$1,000 from Dixon, where did you go? A I put it in my pocket, and we went up to 52nd Street, up to a house on 52nd Street.

Q Do you remember the number? A No, I didn't see the

CASE 1600

number. I was told the number.

MR. SIMPSON: We will concede that it was 252 West 52nd Street.

MR. BOSTWICK: Very well.

BY MR. BOSTWICK:

Q And did you enter the house? A Yes, sir.

Q What kind of a house was it? A An ordinary brown stone front house, and looked to be an ordinary residence, with a high stoop.

Q And you went up the stoop or steps, and went into the parlor; did you? A Yes, sir.

Q Now, what was there in the parlor? A Well, when I went into the parlor, into the front parlor --- there is a front and back parlor, separated by folding doors --- I saw a desk there, with a party sitting there, who evidently was the manager of the place.

MR. BATTLE: I object, and I ask that that be stricken out, "Who was evidently the manager of the place."

THE COURT: Yes, objection sustained. Strike that out and the jury will disregard it.

BY MR. BOSTWICK:

Q Well, you saw a person sitting at a desk there?
A Yes, sir.

Q Was that person the defendant at the bar, O'Neill?

CASE 1600

A. Yes, sir.

Q. And was that place in the County of New York? A. Yes, sir.

Q. Now, did you see a telephone there? A. Yes, I saw a telephone.

Q. Something that purported to be a telephone? A. Yes, that I supposed was a telephone.

Q. Did you see any money there? A. I saw --- yes, I saw money.

Q. Or what purported to be money? A. Yes, sir.

Q. Did you see any blackboard? A. I saw on the wall what I supposed, at that time, at the first glance, was a blackboard. Now, that was the first time I really supposed that was a poolroom.

Q. Would you recognize the blackboard if you saw it again? A. I think I would, yes, sir.

Q. Was it anything like that, Doctor (indicating)?

A. Yes, sir.

MR. BOSTWICK: I ask that that be marked People's Exhibit 1 for identification.

(It is marked People's Exhibit 1 for identification).

BY MR. BOSTWICK:

Q. Now, Doctor, did Dixon --- or was any suggestion made as to the splitting up of the \$1,000? A. After we were

CASE 1600

in the place, we went into a back room, the back parlor, Dixon, Adams and myself, and Dixon then suggested that it would be better, instead of making one bet of \$1,000, to make two bets of \$500 each, and so I gave \$500 to Adams, split the \$1,000 with Adams.

Q And did you make the bet? A Yes, sir, I bet \$500. And Dixon made a small bet. And Adams made a bet of \$500. I made a bet of \$500.

BY THE COURT:

Q How much did Dixon bet? You say he made a small bet. A Yes, sir, \$10.

Q And you made a bet of how much? A \$500.

Q And how much did Adams bet? A He bet the \$500 that I gave him from the \$1,000. I split the \$1,000 with him.

BY MR. BOSTWICK:

Q And did you receive tickets for your bets? A Yes, sir.

Q And after you received tickets, what took place?

A When I bet the money, he gave me those tickets, and he put the money in the drawer, and issued the tickets to us when he put the money in the drawer, and shortly after they were issued, why the place was seized, the place was raided.

Q Now, I show you these three tickets, and ask you if those are the three tickets that were issued at that time?

A I believe they are; yes, sir.

CASE 77-1600

Q And are those the tickets that were issued to you for the bet that you made of \$500 of the money that you received from Dixon, and for the \$500 that you handed to Adams, of the money that you received from Dixon? A Yes, sir.

Q Then this was not your money, Doctor? A I would like to explain that answer --- before I answer that, before I reply to that question of the District Attorney, or the assertion that he made; I would like to make an explanation regarding the ownership of the money.

Q However, let me get it on the record first that my statement was a question, not an assertion. A Well, the District Attorney's question then.

THE COURT: Answer the question, Mr. Witness, and, if you have any explanation to make, then you may make it.

A I'm under the impression now that it was not my money, yes.

BY MR. BOSTWICK:

Q Well, did Dixon make you a present of the \$1,000?

A The \$1,000 was given to me on the street, and I went in there with the impression --- my previous evidence, at the time I gave my evidence before the Grand Jury, I was under a misapprehension regarding the \$1,000, and, as I was not asked regarding it, I stated it as if it were my bet, or

CASE # 1600

my money, without specifying. I was under a misapprehension, entirely, Judge.

BY THE COURT:

Q In what respect were you under a misapprehension?

A In this way: I came to the grand juryroom, that morning, and I was informed that I was to outline the case, to give a general outline of the case, as to what happened, and my impression was that it was to show conclusively that there had been a fraud in the matter. Mr. Du Vivier questioned me regarding the proceeding, then he said, "Now, Doctor, outline to the jury briefly your --- whatever happened there."

Q Did you mention to the Grand Jury that Dixon had given you \$1,000? A No, sir. There were many details that I didn't mention to the Grand Jury and that wasn't asked.

BY MR. POSTWICK:

Q Doctor, when you said before the Grand Jury, if you did say so, "I put up \$500," you meant that you made the bet of \$500; did you? A Yes, sir, exactly.

Q And when you said that you gave Adams \$500, you simply meant that you handed him \$500? A That's exactly what I meant; yes, sir.

Q You didn't mean to testify, then, that you gave Adams \$500 of your own money? A I didn't mean to testify that, no, sir.

Q And when you said "my own", you meant "my bet"?

CASE 1600

A Yes, sir, exactly; the money that I had in my possession at the time.

Q Did you lose anything in this transaction, Doctor?

A No, sir, absolutely nothing.

THE COURT: This is a case where Justice, so to speak, fleeced the crooks.

MR. BATTLE: It is a case of the bitter bit, your Honor.

MR. BOSTWICK: Now, if your Honor please, it has been my impression in the preparation of this case -----

THE COURT: Just one moment.

BY THE COURT:

Q Doctor, you live in Mt. Clemens? A Yes, sir.

Q In what part of Mt. Clemens? A 44 South Gratiot Avenue, a block from the Media Hotel.

Q A block from the Media Hotel? A Yes, sir.

Q Did you ever make any demand upon any of these defendants for any money? A Absolutely none, sir.

Q The claim was made before me by one of the counsel --- I believe Mr. Simpson --- representing the defendant, in the early part of this term, in open court, that a demand was made by the complaining witness upon these defendants for money.

MR. SIMPSON: Upon the wives of the defendants. The defendants were locked up.

CASE # 1600

BY THE COURT:

Q Upon the wives of the defendants. Do you know anything about that? A No, sir, nothing more than I told about the District Attorney, about their calling.

BY MR. BOSTWICK:

Q Now, doctor, did two women call upon you? A Yes, sir.

Q Did they state that they were the wives of the defendants? A Yes, sir.

MR. BOSTWICK: Now, unless there be objection, I will ask for the conversation.

BY MR. BATTLE:

Q Whose wives did they say they were? A Dixon's and O'Neill's wives.

MR. BATTLE: We have no objection.

BY MR. BOSTWICK:

Q Now, then, tell us what occurred? A Now, these ladies called at my hotel, and said that they were the wives of two of the men that were in trouble.

And, at first, they didn't want to state the names of which two defendants, but finally admitted that they were Mrs. O'Neill and Mrs. Dixon.

And they were very much perturbed about the situation, and asked me what my intention was, and I said that my intention was to push the case; that I had been very much

CASE 1600

humiliated, and had incurred considerable loss in the matter, and I proposed to do whatever was right in the matter, to push the case, that it was my intention to do that.

They then asked me what I lost, and I told them it would be a very hard matter to estimate my loss.

And they said, "What would you take to make you good?" And I said, "I wouldn't ask you to make good. And, furthermore, I don't wish to have this call misinterpreted, that I am making any settlement, on the basis of an agreement not to appear, because I certainly intend to appear."

And then they asked me how much I had lost, and I told them I certainly could not tell them how much I had lost.

And they wanted to know where my loss was, and I said that I had lost a week of very valuable time, and, without going into detail with them, I wanted them to feel that I had lost in that way, although I said --- here is the expression that I did make, which might have given them a misunderstanding --- I stated that, had the deal been genuine for which I came here, it would have involved a profit to me of \$4,000.

And I said that, under the circumstances of having lost what I did by coming here, it would not have repaid me for the visit.

That is what I said.

And I said, "At least, I want it distinctly understood

CASE #1600

that there is no demand made from me whatever for payment not to appear."

BY THE COURT:

Q. Was it your intention at any time, Doctor, to make a bet with your own money? A. No, sir, it never was.

Q. I mean in the event of the police not raiding the place? A. Well, now, Judge, I'll say this. I may have made a bet of a few dollars, but not any large sum of money, because I didn't have it to bet, Judge. I had no intention of betting any sum whatever, in fact. I thought it was a small handbook amusement when I went in there. I had no intention of making any bet.

MR. BOSTWICK: I can proceed, if your Honor with this evidence, please, and prove the raid and all the facts that I disclosed in my opening; I have conclusive evidence of every fact, and I can pursue that course, because I have all my witnesses here.

THE WITNESS: And may I state again, gentlemen, that those ladies called a second time to see me at the hotel, but, the second time, didn't reveal anything as definite as at the first time, because they seemed to be of the impression that I wouldn't come here, for some reason, and they were not so much wrought up about it, and not at all in the disposition that they were in when they first called.

CASE #1600

And I know nothing further about that, than a telephone call. I stated that I would be in the hotel, that night, and I told Mrs. O'Neill so, and I asked if she had called, as I supposed she would call, but she hadn't.

And, outside of that, gentlemen, I know nothing of any arrangement with these women.

THE COURT: Is Dixon one of the defendants in court now?

MR. SIMPSON: No, sir; Dixon and Adams have disappeared..

MR. BATTLE: Have you any further evidence as to the ownership of the money, Mr. District Attorney?

MR. BOSTWICK: I have not.

THE COURT: The charge against the defendant is that he obtained a \$1,000 from the complaining witness, with the felonious intent to deprive the true owner of the money, and it appears affirmatively from the evidence of this witness that the money which the defendants intended to deprive him of was money belonging to one of the co-conspirators.

MR. BOSTWICK: I will ask the Doctor one question on that.

BY MR. BOSTWICK:

Doctor, as matter of fact, this \$1,000, which was put in the drawer, and which you and Adams had bet, was given to

CASE #1600

you by, and was the property of the defendant Dixon, and you lost none of your own money. A I lost none of my own money, no, sir. That is not my money in that way. I lost none of my own money in that transaction, in that bet.

MR. BATTLE: And a man can't steal his own money, or conspire to steal it.

THE COURT: That is a settled principle of the law.

MR. BOSTWICK: Now, shall I proceed with the case, your Honor?

MR. BATTLE: I move that the jury be directed to acquit, if your Honor please.

THE COURT: What object is there in proceeding further with the case? The establishment of the raid does not bear on the crime for which the defendant has been indicted.

MR. BOSTWICK: I admit, if your Honor please, that, as a general principle of law, a man cannot steal his own property, but there are well known exceptions to that principle, with which your Honor is familiar, but

I cannot see where this case falls within those exceptions.

THE COURT: I don't think so. In my opinion, what this defendant and Dixon and the others did in this case was to bet their \$1,000 with a view of winning, and then

CASE #1600

the Doctor might have observed how easy it was to win money, and would have been the victim, by betting some of his own money.

I do not think that there is a case here of an attempt to commit a crime, because to render the defendant guilty of an attempt to commit the crime, the evidence would have to show that, ^{if} the full crime had been committed, the defendant would have been guilty thereof.

Now, in this case, supposing that the defendants had fleeced the so-called gamblers of the bet of \$1,000, there would not have been the crime of larceny, since the money belonged to a co-conspirator; and, in order for one to be guilty of an attempt to commit a crime, the evidence must be in such a condition that, if nothing had interfered, the full crime could have been consummated.

Now, there must be more evidence than evidence of a mere intent to commit a crime. There must be an overt act, dependent upon the intent to commit a crime. But your evidence only shows preparation to commit a crime. That is my opinion.

MR. BOSTWICK: Your Honor, I believe that the interests of justice demand that, in view of the evidence of this complainant, in clearing up what may have been a misconception of the evidence given before the

CASE #1600

Grand Jury, and in view of the fact that I have no proof of ownership, except in one of the defendants, of this money which the defendant stands charged with stealing, it would be wrong to occupy further the time of this Court and of these jurymen, by continuing this case, and, therefore, in view of your Honor's statement of the law, which I take to be correct, I ask that the jury be directed to acquit the defendant.

THE COURT: Gentlemen of the jury, there was a time in the history of the law of this State, when a person who entered into an illegal scheme himself could not prosecute another for defrauding him out of his money or property, and the Court of Appeals, in a celebrated case, said: "Neither the law or public policy design the protection of rogues in their dealings with each other, nor to ensure fair dealing and truthfulness as between each other, in their dishonest practices. The design of the law is to protect those who, for some honest purpose, are induced upon false and fraudulent representations to give credit, or part with their property to another, and not to protect those who, for unworthy or illegal purposes, part with their goods."

For over fifty years, the law was unchanged, notwithstanding the fact that Chief Justice Cullen, time

CASE #1600

and again, called the attention of the Legislature to change the law upon the subject.

In the case of the People vs Livingston, and in the case of the People vs Albro, he called the attention of the Legislature to the necessity for a change in the law.

But it was not until three years ago, after the Tracy case, in which a man named Felix was the complainant, that the Legislature passed a law making it criminal for one rogue to steal from another, and I think it was a good law.

In view of the fact that the evidence in this case shows that the complaining witness, the intended victim, lost nothing, and that he was deprived of neither money nor property, there cannot be a conviction of this defendant upon the charge of larceny; because, under our law, a person must, with criminal intent, intent to defraud and deprive the true owner of his property, steal such property, and in this case the property in question belonged to some of the co-conspirators of the defendant, and not to the complaining witness. Therefore, the complaining witness was not deprived of any money or property.

I am satisfied that, if the police had not raided that establishment, ultimately the Doctor would have

CASE #1600

deprived of some money or property.

There are many credulous people in this country, and, being so gullible, he might have been an easy victim for them.

Under the circumstances, therefore, I advise you, gentlemen, to acquit this defendant, because of the insufficiency of the evidence, and the motion of the District Attorney is granted.

(The jury found the defendant not guilty).

THE COURT: And I wish to say now to the District Attorney, that, in the case of the two co-defendants who have forfeited their bail of \$3,000 in each case, that I think it is the duty of the District Attorney to vigorously oppose the remission of that forfeiture.

Those two swindling rogues became aware, last week, that the complaining witness had come to this city to appear in this court and testify, and they got out on bail, and fled the jurisdiction, and they should not now be permitted to return to this jurisdiction, and get back the money that their bondsmen owe the State.

I trust that the District Attorney will oppose an application for the remission of the forfeiture, if made in any part of this court, before any judge of this court, and, if it is made in the Supreme Court, I wish to be notified of that fact, so that I can personally

CASE #1600

oppose the remission of the forfeiture.

MR. BOSTWICK: I can assure your Honor that the District Attorney will oppose, and I believe successfully, any such application.

THE COURT: And as to the money involved in this case, the \$1,000., I direct that it be returned to the Property Clerk of the Police Department. It was brought from his office to this court; was it not?

MR. BOSTWICK: Yes, sir.

THE COURT: Then I direct that it be returned to his custody. Then the rogues concerned in this case may make a claim to it, if they care to, and enforce that claim at law, if they can.

CASE #1600

RECEIVED

1826